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Development (1948) Department.

Pk SERIES.

Letter G.O. No	5740
Dated	19-11-48

BILLS : BILL TO AMEND [illegible] REGULATION OF THE PROFESSION OF ACCOUNTANTS VIEWS OF THE PROVINCIAL GOVERNMENT : COMMUNICATED TO THE GOVERNMENT OF INDIA

No. 21-A(8)/47
GOVERNMENT OF INDIA
Ministry of Commerce.

New Delhi, the 16th September 1948.

From

K. Srinivasan, Esquire, M.A.,
Under Secretary to the Government of India.

To

All Provincial Governments

Subject: Bill to make provision for the regulation of the profession of accountants.

Sir,

I am directed to enclose for your information a copy of an official Bill to make provision for the regulation of the profession of accountants in India introduced in the Constituent Assembly of India (Lehislative) on the 4th September 1948. The Government of India will be glad, if after consulting the professional and commercial interests concerned, the views of the Provincial Government on the Bill are communicated to this Ministry by the 15th November 1948. The views of the various recognised Chambers of Commerce are being obtained by this Ministry direct.

Yours faithfully,

SD. K. SRINIVASAN
Under Secretary to the Government of India

GOVERNMENT OF MADRAS
Development Department.

Fort St. George,
Letter (Ms) No. 5740 Dev: Dated: the 19th November 1948.

From
K.G. Menon, Esq., I.C.S.,
Joint Secretary to Government.

To
The Secretary to the Government of India
Ministry of Commerce, NEW DELHI.

Sir

Sub: BILL to make provision for the regulation of the profession of accountants.
Ref: Letter from the Government of India, Ministry of Commerce, No. 21-A(8)/47 dated the 16th September 1948.

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I am directed to state that only two of the professional and commerical interests who were consulted on the proposed Bill to make provision for the regulation of the profession of accountants in India have responded. Copies of the letters received from the Society of Auditors, Madras, and Messrs. Brahmayya & Co., Madras, on the proposed Bill ar enclosed. The Government of Madras consider that the provisions of the Bill are sound in so far as they seek to achieve the objects in view. It is, however, considered unnecessary to restrict the membership of the Institute to those in practice only. I am, therefore, to suggest that, with a view not to prevent those who accept employment under Government or other institutions from becoming members of the Institute of Chartered Accountants of India, the words" and who is in practice" occurring in clause 2 (1) (b) of the Bill may be deleted.

2. The amendments suggested by the Society of Auditors, Madras, to the proposed Bill call for the following remarks:

(i) Amendment in paragraph 1 (Clause 2 (1) of the Bill: In view of the classification of the members of the Institute into "associates and fellows" provivded for in clause 5 (1) of the Bill, a separate definition of the term "Fellow" will be unnecessary.

(ii) Amendments in paragraphs 2, 10 and 13 (Clauses 2(2), 13(2) and 20(1) of the Bill: The amendments seek to set right minor defects in drafting and may be adopted.

(iii) Amendment in pargraph 3 (clause 4(3): The word "prescribed" should remain in the sub-clause. The Bill does not seem to contemplate the payment of an annual fee in any connection except as required in respect of a certificate under clause 6. It will therefore be quite sufficient if the word "entrance" is inserted after the word "prescribed" in sub-clause (3) of clause 4.

(iv) Amendment in paragraph 4 (clause 5(3): For the reasons explained in item (iii) above, it will not be appropriate to refer to any annual fee in sub-clause (3) of clause 5. It will be sufficient if the word "entrance" is omitted from that sub-clause.

(v) Amendment in paragraph 5 (clause (5): Even the existing sub-clause (3) of clause 5 is wide enough to cover an associate who has been in continnous practice in India for not less than five years at the commencement of the Act. A separate sub-clause on the lines of the one suggested in this paragraph will not, therefore, be necessary.

(vi) Amendment in paragraph 6 (Provisio to clause (7): The suggestion is based on the provision in the Auditors' Certificates Rules, 1932 and may be adopted.

(vii) Amendments in paragraphs 7, 9, 12, 17 (Clauses 9 (1), 11, 16 and 29 of the Bill): As it is necessary that these powers should be retained by the Government for some time in the initial stage, the amendments need not be adopted.

(viii) Amendment in paragraph 8 (Clause 9 (2) (a) of the Bill: The suggestion may be adopted.

(ix) Amendment in paragraph 15 (Clause 28 of the Bill): The amendment is unnecessary.

(x) Amendments in paragraphs 18, 19, 20, 21 22 (Clauses 31 (f), Schedule 1 (c), 1 (n) 1(t) and 1(v): The proposed amendments are not of sufficient importance and need not be adopted.

(xi) Amendments in paragraphs 11, 14 and 15 (Clauses 14, 20(2) 20(3) of the Bill): The amendments are consequential to those not recommended for adoption.

3. A copy of letter received from the Andhra Chamber of Commerce, Madras, in this connection is also enclosed

Yours faithfully,

K.G. MENON
Joint Secretary to Government.

Copy to the Registrar of Joint Stock Companies

/True copy/

Office Assistant,
Madras Record Office, Egmore.

Copy of letter No. Nil dated 18th October 1948 from Brahmayya & Company Madras, to the Registrar of Joint Stock Companies Madras.

Sub: BILL to make provision for the regulation of the profession of Accountants.

We are in receipt of your communication referred to above.

We have gone thrugh the Bill carefully. We have nothing particular to comment upon except to state that the name "Chartered Accountant" does not seem to be quite appropriate. In the case of the Chartered Accountants, England, the Institute obtained a Royal Charter from the then King of England. In the present case, the Bill will be passed into an Act by the Constituent Assembly. In other words, it is a statutory enactment. Under these circumstances, we think it is not appropriate to style the Accountants as "Chartered Accountants". We believe that only where a Society is brought into existence by a Royal Charter, the members can call themselves as EChartered Accountants"

In other respects, the Bill is quite good.

Copy of letter dated 27th October 1948 from the Honorary Secretary, the Andhra Chamber of Commerce, Madras.1, to the Under Secretary to the Government of India, Ministry of Commerce, New Delhi.

Sub: BILL to make provision for the regulation of the profession of Accountants.
Ref: Your No. 21-A(8)/47 dated the 16th September 1948.

I am directed by the Committee of the Andhra Chamber of Commerce to communicate to your Ministry their views on the above Bill as under:

Section 2-(1) (b): The meaning of a Chartered Accountant under the Act is stated to be a member of the Institute: "and who is in practice" The portion of the sentence "who is in practice" should be deleted. In England and elsewhere, a member of an Institute of Chartered or Icorporated Accountants, may hold responsible position in any company, local authority or Government, etc., without his ceasing to be a member of such Organisation. It is unnecessary for restricting the membership of the Institute to practising accountants only. If such restrictions is introduced, several difficulties may arise in practice, for example a practising accountant may be appointed for a special job temporarily for a few years, and afterwards may choose to practice again. In such cases he should cease to be a member while being appointed and should apply for membership of the Institute once again on his leaving the job and setting up his practice. It is common knowledge that members of the profession are appointed as Accountant Members of the Income Tax Appellate Tribunal for a certain period. The difficulty pointed out will arise in their case. The restriction contemplated is quite unnecessary

Section 4: Entry of names in the Register : Clause (1) (1)

Under this Clause, a Registered Accountant, and a holder of a restricted certificate are equally entitled to be enrolled on the Register. Government under the present Auditors Certificates Rules, have kept a separate Register for restricted certificate holders. As such list will end with those persons already noted on it, and the issue of any restricted certificates hereafter is out of question, the Institute, in order to create the impression that only duly qualified and examined candidates are admitted to the membership and others with inferior qualifications are debarred therefrom, should keep a separate list of such restricted certificate holders as at present. Otherwise similar institutes will feel that all the members of the Institute are not of high order and merit.

A special clause should be inserted making provision for the admittance of G.D. as who passed the G.D.A. Examination of the Accountancy Diploma Board, Bombay, before it ceased to exist, but have not been

not been able to undergo articled course, provided such persons undergo practical training within the prescribed time, and taking into account their services as accountants in any large firms or other industrial or other undertakings or in Government or any local authority, etc., accepting five years service as equivalent to one or two years of practical training as articled clerk. It is unfair for Government to treat unrestricted certificate holders as being equal to Registered Accountants, and at the same time refuse permission for passed G.D.As to get enrolled after getting proper practical training.

Section 6: It should be unnecessary for a member of the Institute to obtain a certificate of practice from the Council, to enable him to practice. Every member of the Institute shall be entitled to practice. It is enough if provision is made that should any member accept any full timed job or cease to practice at any time, he should immediately within a month from the date of his accepting the appointment or his ceasing to practice, notify the Council about it, and the Council should thereupon cause the same to be noted on the Register.

Section 9: The following may be added to the proviso to sub-section 3 of this section:

"Provided also that whenever it is found that a particular regional constituency is found to contain too many Members to remain as a single unit, the Council may refer the matter to a Tribunal appointed by the Central Government for the purpose, and the Tribunal after taking in whatever evidence it deems fit, may reorganise or increase the number of regional constituencies for the purposes of this section."

Section 28: Maintenance of Branch Office:

The following may be added to the proviso to sub-section of this section:

"The provisions of this section need not be complied if the Chartered Accountant though having a branch office, for purposes of the convenience, signs all statements and other documents, etc., from this head or main office".

Several accountants have branches for purposes of keeping a certain number of staff at such places to facilitate checking the accounts of concerns in the respective localities. This will serve to save much travelling and other expenses and time also. Hence the addition of above clause is necessary.

Schedule - Clause (n):

At present Registered Accountants are not debarred from having any other avocations. There are several accountants who are not able to command enough practice. Such persons may be enabled as hitherto to be connected with any other business or occupation. This is not a legal profession where persons are required to put in appearance before Courts or other bodies during fixed hours, and naturally the restrictions applicable to them need not apply to this profession which by itself is of a peculiar nature, where audits cannot be created. That is not so in the case of Advocates or Medical Practitioners. It is but fair that a Chartered Accountant may, if he chooses, get interested in any other business or avocation - at least for the present.

I hope that the above suggestions will be accepted by the Government.

Thanking you.

VIEWS OF THE SOCIETY OF AUDITORS, MADRAS, ON CERTAIN OF THE CLAUSES OF THE BILL TO MAKE PROVISION FOR THE REGULATION OF THE PROFESSION OF ACCOUNTANTS.

CLAUSE 2 (1): "Fellow" means a fellow member of the Institute.

The interpretation clause does not contain the definition of the word "Fellow". Presumably this is an omission and may be added to the clause.

2. CLAUSE 2 (2): The clause may be amended as under:

'A Chartered Accountant is said to be in practice' when individually or in partnership with other Chartered Accountants, he in consideration of remuneration received or to be received"

(i) engages himself in the practice of accounting;
(ii), (iii), (iv), (v) to follow as in the bill.

The consideration of payment as a recompense for services rendered or to be rendered is certainly a feature of all the services described in sub-section (i) to (v) and not confined to sub-section (i) only. As worded at present the omission of a reference to the consideration of a payment in respect of services described in sub-sections (ii) to (v) may become significant. The clause as above amended supplies the omission.

3. CLAUSE 4 (3): Substitute the words "Entrance and Annual Fee" in the place of "prescribed fee" occurring in the last line ("payment of the prescribed fee"

Clause 4 (2) exempts persons falling under clause I of sub-section (1) from payment of entrance fee. As it is, there is no provision for payment of entrace fee from persons applying for admission as members. Sub-section 3 of clause 4 which is really intended for the purpose does not refer to the entrance fee. Presumably this is an omission and this is supplied.

4. CLAUSE 5 (3): Substitute the words "Annual fee" in the place of "Entrance fee" occuring after "on payment of the prescribed". For the words "whether before or after the commencement of this Act or whether" substitute the words "whether after the commencement of the Act or"

It reads as if 'entrance fee' has to be paid by the associate a second time, namely, at the time of his application for admission as a Fellow. Obviously this is not what ise contemplated as entrance fee is payable only once and that at the time of admission as a member of the Institute.

This sub-section is intended to apply to Associates who have not completed the practice of five years at the commencement of the Act and also to future admissions to Fellowship.

5. CLAUSE 5: Sub-section 3 of clause 5 be numbered as sub-section 4 and in its place the following sub-section be introduced:

"Any member of the Institute who has been in continuous practice in India for not less than five years at the commencement of this Act shall, on his name being entered in the Register be deemed to have become a Fellow and be entitled to have the letters F.C.A. after his name, to indicate that he is a Fellow of the Institute of Chartered Accountants.

Whereas clause 5 (2) makes provision for a member to be deemed to have become an Associate, there is no similar provision deeming member with continuous practice of not less than five years at the commencement of the Act to have become a Fellow.

"Delete the proviso to sub-section 3 of clause

The latter part of the proviso to sub-section 3 of clause 5 is so far as it relates to payment of entrance fee become un-necessary as there is no question of payment of entrance fee at the time of admission as a fellow. The earlier part of the proviso is incorporated in the new sub-section (3). The necessity for the proviso does not arise and may be deleted.

6. PROVISO TO CLAUSE &: After the words "any other Institute of Accountancy" add the words "the tests and practical training of which are recognised by the Council as equivalent to the tests and practical training as may be prescribed."

The addition proposed is intended to restrict the privilege of using the letters indicating membership of only such institute as maintain the standard of qualifications and training equivalent to those prescribed by the Council, but not to all institutes of Accountancy. This provision is analogous to that containing in the Auditors' Certificate Rules.

7. CLAUSE 9 (1): Delete the words "constituted by the Central Government" occurring in the sub-section

The presence of the words "constituted by the Central Government" would seem to imply as if the Central Government constitutes the Council after its dossolution once in three years. There is no provision of this nautre in professional bodies enjoying autonomous status in other countries. It is considered that the provisions should be such as to enable a council being constituted by virtue of the provisions of the Act and not by the Central Government as contained in the provision. The words referred to may be deleted.

8. CLAUSE 9 (2) (a): Substitute the words "the follows in practice" for the word "Themselves" occurring after "from amongst".

As the provision now stands, it is open to any member, including even a non-practising member, to stand as a candidate for election to the Council. In the interests of the profession it is desirable to restrict the eligibility to stand as candidates for election to the Council to the "Fellows in practice".

9. CLAUSE 11: Delete clause II.

If a constituency is so perverse or whimsical as not to elect a member to the Council, it may be left unrepresented. There is not even the remotest contingency that a constituency will ever fail to represent it on the council. The provision may be deleted.

10. CLAUSE 13(2). The words 'if he becomes subject to any of the disabilities specified in section 8" may be deleted and in its place "if his name is removed for any cause under the provisions of sub-section (1) of Section 20" may be substituted.

Section 8 is not comprehensive. The contengency of resignation from membership of the Institute and default in payment of the annual fee leading to removal from membership is not provided for. The substitution of clause 20(1) in the place of section 8 will cover the eventuality in question.

11: CLAUSE 14: Add the following as proviso to this clause:-

"Provided that whenever the Council is dissolved, it shall continue in office till the new council is constituted in accordance with the provisions of this Chapter, and such new Council shall be constituted within a period not exceeding six months from the date of dissolution of the council."

This provision is suggested in consequence of the amendment proposed to clause 9 (1), and to enable the Council being constituted by virtue of the provisions of this Act. A time limit has been suggested within which the new Council must be constituted. Also provision is made to enable the Council to continue in office till the new Council is constituted with a view to maintain continuity in the functioning of the Council.

12. CLAUSE 16: Delete clause (d) to sub-section (1).

Substitute the two following clauses numbered (d) and (e):

"(d) fix the salaries, fees, allowances and other conditions of service of the Officers and servants of the Council"

"(e) with the previous sanction of the Central Government fix the fees and allowances of the President, Vice-President and other members of the Council."

The Council may be entrusted with the powers to fix the salaries, allowances of the officers and servants of the Council in which the Council will generally be guided by the service conditions obtaining in the Central Government. The provision to obtain the previous sanction of the Central Government in regard to fees and allowances of the President, Vice-President and other members of the Council is retained as they relate to matters in which the personal interests of the members are involved.

13. CLAUSE 20 (1) Add the word "on" after word "which" occurring in the explanation to sub-clase (d) to sub-section (1)

The clause is amended to read as "on being proved" in the place of "being proved" to give a correct rendering of the meaning.

14. CLAUSE 20(2); The sub- section should be deleted.

Clause 15 vests in the Council the disciplinary control and the powers conferred under this Act are to be exercised by the Council only. Sub-section (2) seeks to take away such powers which, in our opinion, is not only a negation of the principles of autonomy but also a betrayal of the lack of faith in the Council. Moreover this Act is intended to control the various professional activities of its members. To single out such activity as taxation work, give it a preference and place beyond the control of the Council is to say the least grossly unfair. What is sause to the goose cannot be otherwise for the gander. The Council's fitness to enquire into the conduct of a Chartered Accountant arising out of any income tax proceedings cannot be questioned once its fitness to exercise the disciplinary powers in regard to other matters is conceded. Even so, the offence alleged must fall under one or other of the Acts enumerated in the Schedule to Section 20 (1) which alone are ~~enumerated in the Schedule to Section 20 (1) which alone are~~ deemed to be guilty conduct and the powers to hold an enquiry are vested in the Council only. The provision if allowed to remain, will be a serious reflection on the professional integrity of its members and their sense of justice and fairplay.

15. CLAUSE 20 (3) : Delete the words "or under sub-section (2)"

The above is consequential on the deletion of sub-section (2) of Clause 20 suggested earlier.

16. CLAUSE 28: Delete sub-section (1) and introduce in its place the following as sub-section (1)

"A Chartered Accountant or a firm of Chartered Accountants shall not maintain more than one Office unless each of such offices is represented by a member of the Institute, provided that no such member shall represent more than one office of his Principal"

(2) Retain the proviso to sub-section (1)

(3) Delete the words "persons in charge of" in sub-section (2) and substitute the words "names of the representatives in"

The language employed is ambiguous particulalry the words "in charge" and Eseparate" in sub-section (1). The proposed change is intended to remove the ambiguity and bring out the object of the provision more clearly. Amendment (3) is consequential.

17. CLAUSE 29: Delte the words "or of the Central Government" occurring in the last line.

The addition of "Central Government" is not understandable and may be deleted. The previous sanction of the Council will be enough for the purpose.

19. SCHEDULE 1 (e):

The ~~last~~ clause may be re-cast so that "who is not a member of the Institue" refers to "other agents" only, but not to a lawyer, auctioneer or broker."

It looks as if profits can be shared if lawyers, auctioneers and brokers are members of the Institute. which presumably is not what is contemplated

20. SCEHDULE 1 (n): After the words "any business" add the words "Vocation"

The addition of the word "vocation" will make the provision more comprehensive.

21. SCEHDULE 1 (v): Add the words "fails" after the word "or" in the sub-clause

This is amended to read as "or fails to use etc" to make the meaning clearer.

22. SCHEDULE 1 (v): Delete for reasons stated under Clause 20 (2).

Office Assistant,
Record Office,
Madras.